

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EAST SIDE UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2015060588

ORDER GRANTING IN PART,
DENYING IN PART, MOTION TO
DISMISS

On June 8, 2015, Parent on behalf of Student filed a Request for Due Process Hearing (complaint) naming East Side Union High School District. Parent's complaint alleges deficiencies regarding District's process of initial assessment of Student.

On June 24, 2015, District filed a motion to dismiss Parent's complaint on the ground that it is moot and contains allegations that are facially outside of OAH's jurisdiction. On June 29, 2015, Parent filed an opposition.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure. Further, given the liberal notice pleading standards applicable to IDEA due process hearing requests, OAH will not dismiss claims that have otherwise been properly pleaded.

The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and assess all children with disabilities residing in the state who are in need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); Ed. Code, § 56301, subd. (a).) This duty is commonly referred to as “child find.” “The purpose of the child-find evaluation is to provide access to special education.” (*Fitzgerald v. Camdenton R-III School Dist.* (8th Cir. 2006) 439 F.3d 773, 776.)

A school district has a child find duty whether or not the parent has requested special education testing or services. (*Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518.) A school district’s child find obligation toward a specific child is triggered when there is reason to suspect that he or she may be an individual with exceptional needs as defined under Education Code section 56026 and in need of special education, even if the child is advancing from grade to grade. (Ed. Code, § 56301, subd. (b)(1).)

To obtain parental consent for an assessment, the school district must provide proper notice to the student and his or her parent. (20 U.S.C. § 1414(b)(1); 20 U.S.C. § 1415(b)(3),(c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and related state law. (20 U.S.C. §§ 1414(b)(1), 1415(c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must be in a language easily understood by the public and the native language of the parent; explain the assessments that the district proposes to conduct; and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.).

DISCUSSION AND ORDER

Here, District’s Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. District contends dismissal is warranted as Parent seeks initial assessments, District sent Parent an assessment plan in English, and Parent returned the signed assessment plan. However, a signed assessment plan is only one piece of the puzzle.

Parent’s Issue I in the complaint alleges claims involving the initial “assessment process” to determine whether Student is eligible for special education under the IDEA. Parent further alleges the District failed to send an assessment plan and procedural safeguards in Parent’s native language of Spanish. An ALJ must consider all the evidence from both sides to determine whether there were any procedural errors committed by District and whether such errors amount to a substantive denial of FAPE. None of these issues can be summarily adjudicated without giving both parties the opportunity to develop a factual record at hearing.

District's motion as to Parent's claim based upon Section 504 is well taken. Student's claim based on section 504 must be dismissed because OAH has no jurisdiction over such claim.

ORDER

1. Parent's claim relating to Section 504 is dismissed.
2. District's Motion to Dismiss as to all other claims is denied.
3. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

DATE: July 07, 2015

/s/

COLE DALTON
Administrative Law Judge
Office of Administrative Hearings